

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In the matter of:

PUERTO RICO ELECTRIC POWER
AUTHORITY,
Palo Seco Steam Plant
Toa Baja, Puerto Rico

NOTICE OF VIOLATION:

Index No. CAA-02-2002-1314

I. STATUTORY AUTHORITY

THIS NOTICE OF VIOLATION ("NOV") is issued to the Puerto Rico Electric Power Authority, ("Respondent") for violations at its Palo Seco Steam Plant located at PR Road 165, km14.0, Toa Baja, Puerto Rico (the "facility"), pursuant to Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. §7413, as amended. Section 113 of the Act requires the Administrator of the U.S. Environmental Protection Agency ("EPA") to notify both the person and the State in which the violation occurred of the finding whenever EPA finds that a person violated a requirement of a State Implementation Plan ("SIP"). The authority to issue this NOV has been duly delegated to the Division Director of the Caribbean Environmental Protection Division, from the Administrator through the Regional Administrator of EPA Region 2.

II. EPA FINDINGS: PUERTO RICO SIP:

A. Visible Emissions:

Rule 403 of the Puerto Rico Regulation for the Control of Atmospheric Pollution, (PRRCAP) Visible Emissions, provides in pertinent part that:

No person shall cause or permit the emission of visible air pollutants of an opacity greater than 20 percent (6-minute average). Compliance with the visible emissions limitation shall be determined by using the test methods in Rule 106.

Respondent owns and operates the Palo Seco Steam Plant which is a source of air emissions. On or about March 6, 2002 a duly-designated EPA inspector conducted an inspection at Respondent's Palo Seco Steam Plant.

During the inspection, the EPA inspector observed that Respondent was operating the facility with a visual emission greater than 20% opacity. Specifically, the visual emission readings taken by the EPA inspector on March 6, 2002, show the following violation(s):

UNIT	VISIBLE EMISSIONS READING
Stack 3-1	29.6 %, 28.7%, 25.2%

Respondent's operation of the facility, as described above, is in violation of the applicable statutes and regulations of both Commonwealth and federal law until it establishes continued compliance. Furthermore, EPA and Respondent entered into a Consent Decree, Civil Action No. 93-2527 CCC, under which Respondent is obliged to operate each generating facility in compliance with Rule 403 of the PRRCAP and the applicable federal law.

III. ENFORCEMENT

Section 113 of the Act, 42 U.S.C. § 7413, provides that after 30 days from the issuance of this NOV, the EPA may:

- issue an order requiring compliance with the requirements or prohibitions of the SIP;
- issue an administrative penalty order pursuant to Section 113(d) of the Act, for civil administrative penalties of up to \$25,000¹ per day of violation;

¹See the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Pub. L. 101-410, enacted October 5, 1990; 104 Stat.890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note; Public Law 104-134, enacted April 26, 1996; 110 Stat. 1321). The Debt Collection Improvement Act or "DCIA" requires each Federal agency to issue regulations adjusting for inflation the maximum civil monetary penalties that can be imposed pursuant to such agency's statutes. With the adoption of this rule implementing these statutes, all violations which take place after January 30, 1997 are subject to the new statutory maximum civil penalty amounts. With limited exceptions not relevant to this referral, all of the statutory penalty provisions applicable to this action have been increased by the maximum allowed: ten percent. All affected penalty provisions and their statutory maximum amounts are set out in Table 1 of 40 C.F.R. § 19.4. In this case, the statutory maximum penalties under the CAA are increased to \$27,500 under the DCIA as well as under the CAA penalty policy amounts.

- bring a civil action pursuant to Section 113 (b) of the Act, for injunction relief and/or civil penalties of not more than \$25,000² per day for each violation.
- bring a criminal prosecution seeking fines and/or imprisonment pursuant to Section 113(c) if Respondent knowingly violates any requirement or prohibition of an applicable implementation plan during any period of federally assumed enforcement.

IV. PENALTY ASSESSMENT CRITERIA

If a penalty is assessed in a civil or administrative action, Section 113 (e)(1) of the Act, 42 U.S.C. § 7413 (e) (1), states that the Administrator or the court, as appropriate, shall, in determining the amount of penalty to be assessed, consider (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113 (e)(2) of the Act, 42 U.S.C. § 7413 (e) (2), allows the Administrator, or the court as appropriate, to assess a penalty for each day of violation. The number of days of violation shall include the date of the notice and each and every day thereafter until Respondent achieves continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, then the EPA may reduce the penalty accordingly.

Upon conviction under Section 113(c), Respondent may be fined pursuant to Title 18 of the United States Code, or imprisoned for a term not to exceed five years or both. If the person is a second time offender, the maximum punishment shall be doubled with respect to both the fine and the term of imprisonment. Also, the facility will be declared ineligible for Federal contracts, grants,

²*Id* at n.1.

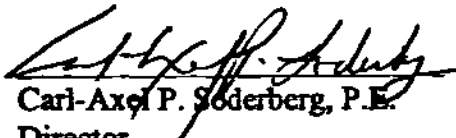
and loans. The Administrator may extend this ineligibility to other facilities owned by the Respondent (Section 306 of the Act, the regulations promulgated thereunder at 40 CFR Part 15, and Executive Order 11738).

V. OPPORTUNITY TO CONFER

Regarding the violations included in this NOV, EPA may give an opportunity to Respondent to confer provided it requests such a conference within five (5) days of receipt of this NOV. A request for a conference should be directed to:

Hector Vélez Cruz, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
1492 Ponce de Leon Ave.
Centro Europa Building Suite 207
San Juan, Puerto Rico 00910
(787) - 977-5850

Issued: 4-9-02
San Juan, Puerto Rico


Carl-Axel P. Soderberg, P.E.
Director
Caribbean Environmental Protection Division
1492 Ponce de Leon Ave.
Centro Europa Building Suite 417
San Juan, Puerto Rico 00910
(787) - 977-5801

To: Mr. Hector Rosario
Executive Director
Puerto Rico Electric Power Authority
G.P.O. Box 364267
San Juan, Puerto Rico 00907-0386

cc: Mr. Angel O. Berrios, Director
Air Quality Area
Puerto Rico Environmental Quality Board
P.O. Box 11488
San Juan, Puerto Rico 00910

bcc: A. Praschak, 2ORC
S. Carreño, 2ORC
D. Stone, 2ORC
H. Patel, 2DECA-AC
F. Claudio, 2CEPD
H. Stewart, DOJ

EPA VISIBLE EMISSION OBSERVATION FORM 1

Method (Check One) Visual 200A 200B Other _____

Company Name PREPA
 Facility Name Palo Seco Power Plant
 Street Address Road 165
 City Tor Baja State PR Zip _____

Process Electric Power Gen Unit # 3-1 Operating Mode _____
 Control Equipment Combustion Operating Mode _____

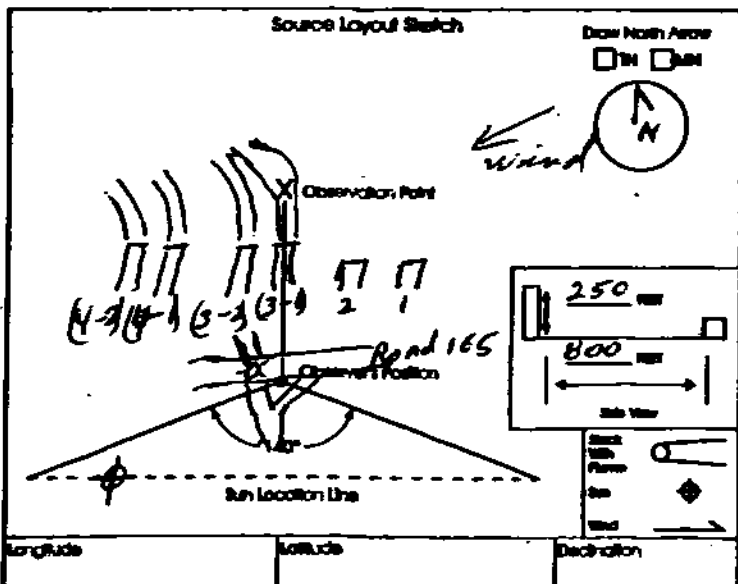
Describe Emission Point Orange and white stripes (Banda)

Height of Emis. Pt. 250' End same Height of Emis. Pt. Rel. to Observer 250' End same
 Distance to Emis. Pt. 800' End same Direction to Emis. Pt. (Degree) 35° NE End same
 (270 Yds)

Viewed Angle to Obs. Pt. 16° End same Direction to Obs. Pt. (Degree) 35° NE End same
 Distance and Direction to Observation Point from Emission Point 4 stacks height End same

Describe Emissions Lighting End same
 Emission Color white End same Visible Dispersal Plume Attached ☐ Detached ☐ None ☒
gray

Describe Plume Background SKY End same
 Background Color Blue End same Sky Conditions Scattered End same
 Wind Speed 4.5 mph End same Wind Direction E to W End same
 Ambient Temp. 92° F End same Wet Bulb Temp. _____ RH Percent 71%



Additional Information _____

Form Number _____ Page 01
 Continued on VEO Form Number 03

Observation Date	Time Zone	Start Time	End Time						
03/06/02	EST-PR	3:41pm	4:10pm						
Sec Min	5	15	30	45	Comments				
1	20	20	25	30					
2	30	25	30	30					
3	30	35	30	30	$\frac{710}{24} = 29.6\%$				
4	35	35	35	30					
5	35	35	35	25					
6	25	25	25	35					
7	35	35	35	25					
8	20	20	25	30					
9	30	25	25	25	$\frac{690}{24} = 28.7\%$				
10	25	30	30	35					
11	20	20	25	30					
12	30	35	40	40					
13	40	35	40	35					
14	35	35	10	5	white cloud on back ground				
15	5	15	15	10	" " " "				
16	15	10	15	20	" " " "				
17	20	25	25	30					
18	30	35	35	35					
19	20	15	15	20	$\frac{605}{24} = 25.2\%$				
20	20	25	25	30					
21	35	35	25	30					
22	25	20	15	15					
23	25	25	20	25					
24	25	20	25	25					
25	20	20	25	25					
26	25	20	15	15	white gray clouds on background				
27	15	15	20	20					
28	25	30	35	35					
29	35	35	35	35					
30	35	35	35	35					

Observer Name (Print) John Aponte
 Observer Signature [Signature] Date 03/06/02
 Organization US EPA
 Certified By ETA Date 12/05/01